

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTHONY SHONE PERSON,

Petitioner,

v.

STATE OF WASHINGTON,

Defendant.

NO. 3:22-cv-05863-DGE-SKV

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (R&R) of the Honorable S. Kate Vaughan, United States Magistrate Judge (Dkt. No. 31) and Petitioner's subsequent motions (Dkt. Nos. 32, 33, 34, 35). The Court agrees with the R&R but addresses Petitioner's subsequent motions below.

I. PETITIONER'S MOTION FOR AN EXTENSION/OBJECTION

Under Local Civil Rule 72, Petitioner needed to file any objections to the R&R by January 20, 2023. On January 5, 2023, Petitioner filed a motion for extension of time, requesting a "30-day continuance" from the noting date because of his oral argument before the Washington

1 State Court of Appeals scheduled on January 11, 2023. (Dkt. No. 32 at 1, 7.) Petitioner also
2 asserted an objection to the R&R, stating that “the issues presented to this Court are adequate to
3 deserve encouragement to proceed further” (*id.* at 5) and requesting that his habeas corpus
4 petition be permitted to continue “if the State of Washington does not resolve the issue . . . and
5 the Petitioner is immediately released from unlawful custody.” (*id.* at 6.)

6 As explained by the R&R, “Section 2254 unequivocally requires that a state prisoner
7 exhaust all state court remedies before seeking a federal writ of habeas corpus.” (Dkt. No. 31 at
8 2.) A complete round of the state’s established review process includes presentation of a
9 petitioner’s claims to the state’s highest court. *James v. Borg*, 24 F.3d 20, 24 (9th Cir. 1994).
10 Therefore, Petitioner’s objection is unavailing as his case cannot remain in federal court while
11 simultaneously on appeal before the Washington State Court of Appeals. The Court finds no
12 compelling reason to grant Petitioner an extension to submit further objections on this basis and
13 DENIES Petitioner’s motion for extension of time (Dkt. No. 32). The Court overrules
14 Petitioner’s objection and ADOPTS the R&R (Dkt. No. 31).

15 II. PETITIONER’S SUBSEQUENT MOTIONS

16 Petitioner filed several motions with the Court after the deadline for objecting to the
17 R&R: a motion for immediate release from custody (Dkt. No. 33 at 1), a motion for
18 reconsideration (Dkt. No. 34 at 1), and a memorandum styled “meritorious defense” (Dkt. No. 35
19 at 1). Because the deadline to file objections has passed and the Court adopts the R&R,
20 Petitioner’s motions are DENIED as moot.

III. CONCLUSION

The Court, having reviewed Petitioner's petition for writ of habeas corpus, the Report and Recommendation of the Honorable S. Kate Vaughan, United States Magistrate Judge, and the remaining record, hereby finds and ORDERS:


(1) The Report and Recommendation (Dkt. No. 31) is approved and ADOPTED.

(2) Petitioner's petition for writ of habeas corpus (Dkt. No. 29) and this action are DISMISSED without prejudice for failure to exhaust state court remedies under 28 U.S.C. § 2254(b)(1)(A).

(3) In accordance with Rule 11 of the Rules Governing Section 2254 Cases in the United States District Courts, a certificate of appealability is DENIED.

(4) The Clerk is directed to send copies of this Order to Petitioner and to Judge Vaughan.

Dated this 6th day of February, 2023.



David G. Estudillo
United States District Judge